



Asten is without knowledge or information sufficient to form a belief as to the truth of those averments.

**BACKGROUND FACTS—THE PLAINTIFFS**

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**BACKGROUND FACTS—THE DEFENDANTS**

118. Asten incorporates its response to the preceding 117 paragraphs as if restated fully herein.

119. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

120. To the extent the averments contained in these paragraphs are directed to a party other than the defendant Asten, no responses are required. Asten denies the averments of this paragraph to the extent they aver Asten's principal place of business is in Delaware, but admits the address of its registered agent as listed in this paragraph. As to the averments contained in this paragraph that purport to identify asbestos-containing products at plaintiffs' workplaces during their employment years, Asten is without knowledge or information sufficient to form a belief as to the truth of those averments. Asten admits that it manufactured products which were generally referred to as a dryer felt or dryer fabric, designed, manufactured, and sold for use on paper making machines, for use in the process of making and drying paper; that it manufactured, sold, and distributed only its own product and did not sell or distribute its product through other entities; that some of the dryer felts and fabrics manufactured between 1931 and 1980 were woven, in part, using chrysotile-containing yarn; that dryer felts and fabrics were the only asbestos-containing products ever manufactured by Asten; that at certain specific times in the past the style names under which these products were marketed and sold included "Synbest" and "Asbestos" felts and "Bestmesh," "Ventmesh," and "Thermesh" dryer fabrics. Asten denies that any product it manufactured with the style name "Calcot" contained any asbestos or that, in general, products manufactured with the style name "Syncot" contained any asbestos.

121. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

122. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

123. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

124. As to all averments in this paragraph that are directed to Asten, Asten denies those averments. As to all remaining averments, Asten is without knowledge or information sufficient to form a belief as to the truth of those averments.

**DEFENDANTS' CONDUCT AND PLAINTIFF'S DECEDENT'S INJURIES**

125. Asten incorporates its response to the preceding 124 paragraphs as if restated fully herein.

126. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

127. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

128. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

129. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

130. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

**COUNT I**

131. Asten incorporates its response to the preceding 130 paragraphs as if restated fully herein.

132. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

133. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

134. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

**COUNT II**

135. Asten incorporates its response to the preceding 134 paragraphs as if restated fully herein.

136. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

137. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

138. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

139. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

140. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

141. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

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145. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

146. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

147. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

### **COUNT III**

148. Asten incorporates its response to the preceding 147 paragraphs as if restated fully herein.

149. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

150. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

151. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

152. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

153. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

154. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

#### **COUNT IV**

155. Asten incorporates its response to the preceding 154 paragraphs as if restated fully herein.

156. The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

157. To the extent the averments in this paragraph are directed to Asten, Asten denies those averments.

158. The averments of this paragraph state legal conclusions which do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

#### **JURY DEMAND AND AD DAMNUM**

The averments of this paragraph do not require a response from Asten. To the extent an answer is required, Asten denies the averments contained in this paragraph.

Further answering the complaint, Asten denies all averments not specifically admitted herein.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are or may be barred by applicable statutes limitations or the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims are or may be barred by contributory negligence, comparative negligence, assumption of the risk, and their own negligence or the negligence of their families.

**FOURTH AFFIRMATIVE DEFENSE**

If the plaintiffs should prove that they sustained injuries and damages as alleged, such injuries and damages resulted from acts or omissions on the part of the third parties over whom Asten had or has no control or right of control.

**FIFTH AFFIRMATIVE DEFENSE**

While Asten denies the plaintiffs' allegations of negligence, statutory liability, and strict liability, any injury and damages (to the extent that plaintiffs may be able to prove such), were the result of intervening and superseding negligence on the part of parties over whom Asten had or has no control or right of control.



**SIXTH AFFIRMATIVE DEFENSE**

At all relevant times, the agents, servants, and employees of Asten used proper methods in handling, manufacturing, distributing, supplying, and designing the asbestos-containing product(s) complained of, and did so in conformity and compliance with the applicable industry standards, practices, and procedures, as well as applicable government regulations, available knowledge, state of the art, and research of the scientific and industrial communities.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs, his/her co-workers, employers, family, relatives, agents, and other individuals did or may have misused, abused, mistreated, and misapplied the Asten product alleged to be asbestos-containing. If the Court finds that any misuse, abuse, mistreatment, or misapplication of the alleged asbestos-containing product of Asten caused or contributed to the alleged damages or injuries to the plaintiffs, then Asten requests that the amount of damages which might be recoverable shall be diminished by the proportion which the same misuse, abuse, mistreatment, or misapplication is attributable or may be attributed to the plaintiffs, his/her co-workers, employers, family, relatives, agents, or other individuals bears on the conduct which caused the alleged damages or injuries.

**EIGHTH AFFIRMATIVE DEFENSE**

Any alleged oral warranty of Asten upon which plaintiffs relied is inadmissible and unavailable because of the provisions of the applicable statute of frauds.

**NINTH AFFIRMATIVE DEFENSE**

As to all causes of action pleaded in the complaint which are based upon expressed or implied warranties or representations, the alleged breaches thereof as against Asten are legally insufficient by reason of plaintiffs' failure to allege privity of contract between the plaintiffs and Asten.

As to all causes of action pleaded in the complaint which are based upon expressed or implied warranties or representations, the alleged breaches thereof as against Asten are legally insufficient because Asten did not sell, manufacture, supply, or distribute any asbestos-containing product to the plaintiffs. Additionally, plaintiffs were not purchasers, consumers, or users of the asbestos-containing product(s) attributed to Asten for which plaintiffs' claims caused and contributed to the injuries and damages averred in the complaint.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs neither received nor relied on any oral or written advertising, representation, or warranty allegedly made by Asten. To the extent Asten made such an oral or written advertising, representation, or warranty, which is specifically denied, any alleged reliance by the plaintiffs was unjustified and unreasonable.

**ELEVENTH AFFIRMATIVE DEFENSE**

In the event that any breach of warranty is proven, plaintiffs failed to give proper and prompt notice of any such breach of warranty to Asten.

**TWELFTH AFFIRMATIVE DEFENSE**

To the extent that the causes of action pleaded by plaintiffs fail to accord with the Uniform Commercial Code, including but not limited to Section 2-725 thereof, the plaintiffs' complaint is time-barred.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, any injuries and damages suffered by plaintiffs, such injuries and damages being specifically denied, are barred in whole or in part because plaintiffs failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in the complaint.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' cause of action for punitive damages is barred because such damages are not recoverable or warranted in this action.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped from asserting the causes of action alleged in the complaint.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have waived the causes of action and recovery alleged in the complaint.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to name and join essential and necessary parties.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Asten denies specifically that, during the periods of exposure alleged in the complaint by the plaintiffs, it either processed, manufactured, designed, supplied,

developed, tested, fashioned, packaged, distributed, delivered, sold, or otherwise placed in the stream of commerce any percentage of the asbestos-containing product(s) to which plaintiffs allegedly were caused to come into contact and which plaintiffs allegedly were caused to breathe, inhale, or digest, and which thereby caused the plaintiffs' injuries and resulting damages alleged in the complaint.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

In the event it should be proven at the time of trial that some or all the defendants are subject to market share or enterprise liability, then Asten's share of such liability would be of such a *de minimus* amount as to make its contribution for damages negligible, and Asten would be entitled to contribution, either in whole or in part, from the other defendants herein. Moreover, if it should be determined that some of the defendants may be subject to market share or enterprise liability, any potential share attributed to Asten should be severed from such a determination because the number of defendants which manufactured a dryer felt containing asbestos at one time is limited and because Asten is in a superior position to the plaintiffs to identify the manufacturer of any asbestos-containing dryer felt product which plaintiffs claim exposure.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Asten denies that plaintiffs had any exposure to any asbestos-containing product manufactured, supplied, developed, tested, fashioned, packaged, distributed, delivered, sold, or otherwise placed in the stream of commerce (if any) by it, and more particularly denies, upon information and belief, that it manufactured, supplied, developed, tested, fashioned, packaged, distributed, delivered, sold, or otherwise placed in the stream of

commerce any asbestos-containing product dates at all times alleged in the complaint herein.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs contributed to his/her illness by the use, either in whole or in part, of other substances, products, medications, and drugs.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Asten incorporates by reference, as if more fully set forth at length herein, all defenses, both affirmative and otherwise, raised, pleaded, or asserted by all other defendants.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The injuries and damages allegedly suffered by plaintiffs, if any, which injuries and damages are specifically denied by Asten, were the result of culpable conduct or fault of third persons for whose conduct Asten is not legally responsible, and the damages recovered by the plaintiffs, if any, should be diminished or reduced in the proportion to which said culpable conduct bears upon the culpable conduct which caused the injuries and damages. Any liability on the part of Asten (which liability is vigorously and specifically denied) is fifty percent or less of the liability of all persons who are the cause of the alleged injuries and damages, if any.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Some or all of causes of action may not be maintained because of the doctrine of collateral estoppel.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Some or all of causes of action may not be maintained because of the doctrine of payment.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Some or all of causes of action may not be maintained because of the doctrine of release.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Some or all of causes of action may not be maintained because of the doctrine of *res judicata*.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The court may lack jurisdiction over defendant and some or all of the claims asserted by plaintiffs in the complaint.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by Rule 12(b)(3) of the Federal Rules of Civil Procedure and the doctrine of *forum non conveniens*.

**THIRTIETH AFFIRMATIVE DEFENSE**

Asten reserves the right to assert other affirmative defenses as may be warranted as discovery in this action proceeds.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' claims seeking exemplary and punitive damages violate Asten's procedural and substantive Due Process rights provided by the Fifth and Fourteenth Amendments of the United States Constitution and its rights under the Constitution of the State of Delaware, including but not limited to the Excessive Fines clause found in Article I, Section 11.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims seeking exemplary and punitive damages violate Asten's right to Equal Protection under the law and are otherwise unconstitutional under the Fourteenth Amendment to the United States Constitution.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

Allegations by plaintiffs' spouse of mental anguish and pain and suffering are barred because (s)he did not witness a traumatic event or accident, because (s)he has no physical injury, and because any harm suffered was not foreseeable.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' employers were sophisticated purchasers and users of products containing asbestos and had full knowledge of the risks associated with use of those products.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint fails to comply with the requirements of Rule 9(b) of the Federal Rules of Civil Procedure.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint should be dismissed based on an insufficiency of process and service of process.

**CROSS-CLAIMS AGAINST CO-DEFENDANTS**

Asten denies any liability, but in the event that liability is found, it demands indemnification and contribution from its co-defendants. If any liability is found, it should be apportioned between the defendants by the trier of fact.

**ANSWER TO ALL CROSS-CLAIMS**

Asten denies the averments of all cross-claims that have been and are made against it in this suit.



WHEREFORE, Asten demands judgment dismissing plaintiffs' complaint, with prejudice, and awarding Asten costs and disbursements, and in the event of any judgment over and against Asten, Asten demands judgment, contribution, and indemnity against all co-defendants in accordance with the principles of fault and apportionment, along with costs and disbursements, including reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

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